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OBSERVATIONS

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Regiam Majeſtatem.

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THE *Regiam Majeſtatem* bears ſo great a reſemblance to a book, wrote, as the Engliſh maintain, by Ranulph de Glanville, who was Lord Chief Juſtice of England from the 1180 to the 1189, that it muſt be evident to every perſon who inſpects thoſe two books, that the one is made up or rather copied from the other. Hence ariſes a queſtion, confeſſedly difficult, Which of theſe two books is the copy, and which is the original? The determination of this queſtion is the more difficult upon this account, that it appears the perſon, whoever he was, that compoſed the one of theſe books out of the materials of the other, did all that was in his power to cover the fraud. And this has ſo far had the deſired effect, that learned men have appeared on both ſides of the queſtion; and the evidence produced by either party being but ſlender,

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people have thought themſelves at liberty to determine it according to their wiſhes and inclinations. Craig and Lord Stair have gone into the opinion, That the *Regiam Majeſtatem* is not a book of Scottiſh law, but is merely a tranſcript of Glanville's book. On the other hand, Sir John Skene, Sir James Dalrymple, Mr James Anderſon, and others, have maintained, That the *Regiam Majeſtatem* is a book of Scottiſh law, and was wrote in the days of David I. who reigned from the 1124 to the 1153.

In conſidering this queſtion, the writer of theſe few pages remembered, that fraud is a thing not eaſy to be concealed; and that thoſe very arts which are employed to cover it, have often the contrary effect, and afford the higheſt evidence of the impoſture. For this reaſon, he thought it worth his pains attentively to peruſe the two books, imagining that ſome evidence might be gathered from them for determining the diſpute; eſpecially as Craig had ſaid in general, that, from comparing the two books, it was ſo plain, that the *Regiam Majeſtatem* was a tranſcript of Glanville's book, "ut ne cæcum quidem latere poſſit *." And

* Craig, De feudis, lib. 1. d. 8. § 11.

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certainly, if, from this compariſon, there ariſes any ſuch evidence, it merits a very particular regard; becauſe intrinſic evidence is always of great weight, and loſes nothing by time; and is the more valuable in a caſe of this nature, where other evidence is ſo ſcarce and ſo uncertain.

BEFORE we come to the reſult of the inquiry, we may premiſe an obſervation or two. Glanville has been held, by the antiquaries of England, to be the firſt who reduced their laws to a ſyſtem *; and the Engliſh law-book now in our view has been always held as this ſyſtem, and has borne Glanville's name; and it alſo has his name in the *teſte* of ſome of the brieves of the firſt book †. The author of the *Regiam Poteſtatem* could ſay, when he wrote, "Tem-"pore H. Regis avi Dom. Regis." *lib.* 9. *cap.* 13. *et alibi;* which anſwers to Henry II.'s time: and as it was wrote after the 20th of the King, *lib.* 13. *cap.* 4. & 5. it appears to be wrote when Glanville was Chief Juſticiar. Whereas the *Regiam Majeſtatem*, though a book of the greateſt im-

* Vid. Spelman, Gloſſ. voce *Juſticiarii*, p. 338.

† Vid. Reg. Pot. lib. 8. cap. 2. & 3.

portance, containing, as is ſaid, the laws of the kingdom, wrote, at the command of King David *, by ſome famous lawyer, is owned by no body; and, notwithſtanding all the noiſe that a work ſo new muſt have made in Scotland, yet its author is not mentioned by any one hiſtorian. This of itſelf is a ſuſpicious circumſtance: the work is anonymous, which agrees well with its being an impoſture. Glanville's work bears his name, which is a preſumption at leaſt in his favour, that he was the compoſer of it; and it does not well appear, if the *Regiam Majeſtatem* had been wrote in St David's days, how Glanville could, ſo ſoon thereafter, have had the boldneſs to republiſh it, and paſs it for his own, in a kingdom too that lay ſo near, and with which our anceſtors had ſo much correſpondence.

We proceed to another ſuſpicion, perhaps of ſome more weight. It is obſervable, that Glanville's work is divided, and indeed naturally divided, into fourteen ſeparate books or treatiſes, concerning diſtinct

* Vid. Reg. Maj. lib. 1. in proœm. § 10.

matters;

matters; and theſe follow one another in order, agreeably to the diviſions intimated in *cap.* 2. & 3. of the firſt book. But the *Regiam Majeſtatem* is divided only into four books, which are for the moſt part compoſed of thoſe fourteen of Glanville's. This diviſion could not at all be natural; and no good reaſon can be given why it ſhould have been choſen, but this, that it was deſigned to cover the impoſture: for, except upon this account, it might have been of any other number than four; and, with the greateſt propriety, ſhould have been compoſed of fourteen books, according to the method laid down by Glanville.

ALTHOUGH the order of treating matters, and the matters treated of, in both books, be generally the ſame; yet they are ſometimes different; and when they differ, the tranſpoſitions in the *Regiam Majeſtatem* ſeem unaccountable. There are inſerted, with little art or connection, into the *Regiam Majeſtatem*, pieces treating of matters quite foreign to the proceſſes there treated of. The inſtances of tranſpoſitions are theſe: The *Reg. Maj. lib.* 1. *cap.* 3. § 3. makes mention of a plea for not keeping a

final agreement of a proceſs after it was made in court. This plea is the third proceſs mentioned in that chapter, and accordingly it ought to have been treated in the third place; but in *Reg. Maj. cap.* 27. it is treated of before the ſecond proceſs mentioned in the ſaid *cap.* 3. *lib.* 1. And it is pretty remarkable, that it is treated of there in a manner ſo ſuperficial as not to be intelligible; whereas it is moſt diſtinctly treated of by Glanville. Thus alſo the *cap.* 23. of the 3d book of the *Regiam Majeſtatem* ſeems to come in there ſomewhat oddly; whereas it comes in very naturally in Glanville, *lib.* 8. *cap.* 9. *&c.* Theſe are inſtances of tranſpoſitions: But the inſtances of pieces unnaturally inſerted, and foreign to the matters in queſtion, are rather more frequent. Such are *cap.* 2. 16. 17. 18. 19. 20. *Reg. Maj. lib.* 1.; and ſuch alſo are the *cap.* 28. 29. 30. 31. of the ſame book, and from the 1ſt to the 11th chapter of the 2d book, and 15th chapter of that book. And, to finiſh the obſervation on this head, from *cap.* 9. to the end of the 4th book of the *Regiam Majeſtatem*, various inconſiſtencies appear; things are treated of, which were not mentioned in the diſtribution of

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the work in the beginning of the firſt book, and which are quite foreign to the points or crimes there to be treated.

One may obſerve at firſt, that, in the very beginning, the *Regiam Majeſtatem* and Glanville's book differ concerning the courts before which ſeveral actions are to be brought. But when the *Regiam Majeſtatem* comes to treat of theſe actions, it contradicts itſelf, and lays the proceſſes, not before the courts it had mentioned in the beginning, but before the courts which Glanville's book had ſaid were the proper courts. In the beginning of both of the books, the diſtinction is made betwixt pleas which belong to the crown, and thoſe which belong to the ſheriff, in criminal matters; and Glanville goes on in the ſame regular way to ſhow, what civil cauſes come before the King's court. Now, thoſe pleas which Glanville ſays are tried in the King's court, are, by the *Regiam Majeſtatem*, ſaid to belong to the ſheriff; though, when they come to be treated of in the *Regiam Majeſtatem*, they are ſaid to pertain to the King's court, in oppoſition to that of the ſheriff. Thus the *placitum de debitis laicorum*, which,

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in the *Reg. Maj. lib.* 1. *cap.* 3. § 6. is ſaid to pertain to the ſheriff, is, by Glanville, *lib.* 1. *cap.* 3. ſaid to belong to, and to be tried by the King's court, in oppoſition to that of the ſheriff. But yet this proceſs, when treated of in the *Reg. Maj. lib.* 3. *cap.* 1. is there, agreeably to Glanville's diſtinction, and to what he ſays again when he treats of it more particularly *lib.* 10. *cap.* 1. made to pertain *ad coronam Regis;* the very phraſe which both books uſe in the beginning to point out the King's court, in oppoſition to that of the ſheriff, when criminal cauſes are divided betwixt theſe two courts. Again, the *placitum de tertia parte mulierum* is in *Reg. Maj. lib.* 1. *cap.* 3. § 2. made to pertain to the ſheriff, although (which is alſo an abſurdity) the *placitum de dotibus*, which is the ſame plea, is made to belong to the eccleſiaſtic court, by *cap.* 2. *ej. lib.* § 1. But when it is treated of *Reg. Maj. lib.* 2. *cap.* 16. there, agreeably to Glanville's book, *lib.* 1. *cap.* 6. it is made to pertain to the King's juſticiar, § 21. 25. 37. 53. *&c.* as in Glanville, *lib.* 6. *cap.* 1. *&c.* Theſe are direct inſtances; ſome more indirect ones ſeem to occur, as *Reg. Maj. lib.* 1. *cap.* 27. § 1. and *cap.* 15.

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§ 3. and *lib* 3. *cap.* 20. which ſeem to ſuppoſe, that the pleas there mentioned are treated of in the King's court, and not in the ſheriff's, contrary to what is ſaid of them in the beginning of the *Regiam Majeſtatem.*

It appears, that, though the treatiſes on each plea are diſtinct in Glanville; yet they are all confounded in the *Regiam Majeſtatem*, by being injudiciouſly compriſed in four books, as has been already obſerved. But ſtill they are cited and referred to in the *Regiam Majeſtatem* as diſtinct treatiſes or books. This was proper in Glanville; but highly improper, and not to be accounted for in the *Regiam Majeſtatem*, unleſs we ſuppoſe that it happened through inadvertency in copying it from Glanville. Thus, *Reg. Maj. lib.* 3. *cap.* 29. § 12. the treatiſe *Of Marriage* is cited; and *lib.* 2. *cap.* 11. § 6. the treatiſe *De Loquelis;* and *lib.* 3. *cap.* 21. § 12. the treatiſe *Of Warrants;* and *lib.* 1. *cap.* 23. § *ult.* the *Liber de debitis* is cited. All which treatiſes are ſeparate treatiſes or books in Glanville, but are indiſcriminately treated of in the *Regiam Majeſtatem.*

But againſt this laſt argument it may be urged, That, even in Glanville, *lib.* 13. *cap.* 15. the treatiſe *De heredibus minoribus* is cited, although there be no ſuch ſeparate treatiſe; for the *lib.* 7. which treats of that matter, is cited by Glanville, *lib.* 13. *cap.* 11. as a treatiſe concerning marriage. The anſwer is, That theſe treatiſes are ſo nearly connected, that the ſame book neceſſarily comprehended both; ſo that it might well be cited as a treatiſe upon either marriage or heirs-minors.

It may be alſo remarked, That although Glanville's book be more complete than the *Regiam Majeſtatem*, yet, beſides the interpolations already mentioned, it wants ſome things that are in the *Regiam Majeſtatem*, which yet agree to the points there treated of. Thus, upon every plea, Glanville has a ſeries of brieves, all in their proper places; which are almoſt wholly omitted in the *Regiam Majeſtatem*, (except in the ſingle part which concerns terces), and often very abruptly, ſo that the omiſſion is quite evident. On the other hand, Ganville has ſome queries, in different parts of his book, which are not anſwered by him, though

though theſe are anſwered in the *Regiam Majeſtatem.* Thus, Glanville, *lib.* 10. *cap.* 18. ſtates a point, which is anſwered *Reg. Maj. lib.* 3. *cap.* 14. § 15. More inſtances of this appear from Glanville, *lib.* 7. *cap.* 16. compared with *Reg. Maj. lib.* 2. *cap.* 52. § 2.; and Glanville, *lib.* 10. *cap.* 13. *ad fin.* compared with *Reg. Maj. lib.* 3. *cap.* 9. § 7.; and Glanville, *lib.* 11. *cap.* 5. *ad fin.* compared with *Reg. Maj. lib.* 3. *cap.* 19. § 2. *ad fin.*——Theſe things coincide entirely with the ſuppoſition, that Glanville's book was an original; but ſeem wholly incompatible with its being a tranſcript of the *Regiam Majeſtatem.* For it would have been very ſtrange, if Glanville had copied the queſtions, and yet omitted the anſwers. But it may be eaſily ſuppoſed, that the compoſer of the *Regiam Majeſtatem* might frame anſwers to a few of Glanville's queſtions; and it would have been extremely ſtrange, if Glanville had framed, all at once, a ſet of brieves, to anſwer a treatiſe made not in his own country; but it is very ſuppoſeable, that, though the Scots and Engliſh laws were anciently pretty ſimilar, yet that in all things they were not ſo; and that the brieves in Glanville might not correſpond

ſpond to the Scottiſh forms, which made it proper not to inſert them in the *Regiam Majeſtatem:* And this may be ſuſpected to have been the caſe of the proceſs *De fine facto in curia non obſervato*, ſo ſlightly mentioned in the *Regiam Majeſtatem*, and ſo fully treated of by Glanville.

THERE are mentioned in Glanville's book * ſome laws which relate particularly to the Engliſh cuſtoms; and there is proof, that theſe prevailed in England at Henry II.'s days: but there is no proof, that there were ſuch laws in Scotland at that time. Such is the law which, he ſays, took place concerning reliefs; that, *in feodo militis*, it was 100 ſhillings; and that there was nothing aſcertained in baronies, but it was there at the King's pleaſure to take what he thought fit. And this tallies exactly with the charters of King John, and the *Magna Charta;* which firſt fixed this quantity of theſe reliefs of baronies, which all the hiſtorians and antiquaries of England † agree were till then arbitrary. There is yet another law in Glanville and the *Re-*

* Vid. Glan. lib. 9. cap. 4. ad fin. and alſo Reg. Maj. lib. 2. cap. 71.

† Vid. Spelman, voce *Relevium*.

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giam Majeſtatem *, That, by the cuſtom of the kingdom, ſubſequent marriage had not the effect of legitimating children begotten in concubinage. That this was the law of England about the time of Henry II. may appear, independent of other authorities, from this, that, in the ſtatute of Henry III. commonly called *Statut. de Merton. cap.* 9. there is mention made of this law as at that time the eſtabliſhed law of that country: for, when the biſhops and all the clergy intreated the earls and barons to have it altered, they anſwered, " Quod nolunt leges " Angliae mutari, quae hucuſque uſitatae " ſunt et approbatae." And this continues to be law in England till this day, although it is contrary to the Canon and Civil law. But there is no good reaſon to believe, that this was law in Scotland, at that or any other time.

THE reſult of the whole ſeems to be pretty certain, That the *Regiam Majeſtatem* is a book copied from Glanville.

* Reg. Maj. lib. 2. cap. 51. Glan. lib. 7. cap. 5.